## UNITED STATES DISTRICT COURT District of Maine

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)	Civil No. 04-123-P-S
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## ORDER AFFIRMING THE RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the Court on August 11, 2005, his Recommended Decision (Docket No. 38). Plaintiffs filed their Objection to the Recommended Decision (Docket No. 39) on August 22, 2005. Defendant filed its Partial Objection (Docket No. 40) on August 29, 2005. Defendant filed its Response to Objection (Docket No. 41) on September 9, 2005. Plaintiffs filed their Response to Objection (Docket No. 42) on September 16, 2005.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a <u>de novo</u> determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determine that no further proceeding is necessary.

- 1. It is therefore <u>ORDERED</u> that the Recommended Decision of the Magistrate Judge is hereby <u>AFFIRMED</u>.
- 2. The cross-motions for summary judgment are <u>DENIED</u> with respect to the question of whether the plaintiff's claims are preempted by section 301 of the Labor-Management Relations Act because disputed issues of material fact remain regarding that issue. Plaintiff's Motion for Summary Judgment (Docket No. 21) is <u>DENIED</u>. Defendant's Motion for Summary Judgment (Docket No. 22) is <u>GRANTED</u> as to any claim asserted in Count II of the complaint arising under 26 M.R.S.A. § 621-A and as to Count IV and otherwise DENIED.

/s/ George Z. Singal	
Chief U.S. District Judge	

Dated this 22<sup>nd</sup> day of September, 2005.

DAVID O WARNER represented by CHARLES W. MARCH

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**Plaintiff** 

WILLIAM D FREEMAN represented by CHARLES W. MARCH

(See above for address)

**Plaintiff** 

**DANIEL S MCLAUGHLIN** represented by **CHARLES W. MARCH** 

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**Plaintiff** 

ROGER L LEHOUILLIER represented by CHARLES W. MARCH

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**Defendant** 

ATKINSON FREIGHT LINES

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